(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061366

Cr A. 2325/97

APPEAL OF PRISONER Division Bench (Criminal)

No. 6162 Name देवसिंह

Father's name कंवरसिंह मालिक मकान श्रीलाल छिपा, पो० गोपालबेड़

Residence दिवला, रामपुर (म०प्र०) Age 48 वर्ष

Sentenced to आजीवन कारावास On 11-9-97

Under section 302 भा०द०वि० by माननीय पंचम अपर सत्र न्यायालय रामपुर (म०प्र०)
जुर्माना - 500 या 3 माह कारावास.

S.T. No.- 163/97

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 6162 Name देवसिंह S/o कंवरसिंह

Confined in केन्द्रीय Jail रामपुर (म०प्र०)

No. 320/विविध/97 Dated 23/09/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त सत्र न्यायाधीश
माननीय उच्च न्यायालय म०प्र०, जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्नः- S.T. No- 163/97 की
सत्यापित प्रतिलिपि।

Superintendent
Jail

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court

High Court of Madhya Pradesh
JABALPUR
Received on 4 OCT 1997
Registration No. 688

(P. T. O.)

(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 2325 of 1997

Appellant — Hem Singh

Versus

Respondent — State of M.P.(now State of Chhattisgarh) through Police Station – Chura, Tahsil-Gariaband, District- Raipur.

DIVISION BENCH : Hon'ble Mr. Justice **L. C. Bhadoo**, and
Hon'ble Mr. Justice **Satish K. Agnihotri**, JJ

Dr. Shailesh Ahuja, Advocate for the appellant.
Shri U. N. S. Deo, Government Advocate for the State.

ORAL JUDGMENT

(20th July, 2006)

The following Judgement of the Court is delivered by **L. C. Bhadoo, J.**

1. The appellant has preferred this appeal, from jail, under Section 374(2) of the Code of Criminal Procedure, questioning the legality of the judgment of conviction and order of sentence dated 11.9.1997, whereby the Vth Additional Sessions Judge, Raipur after holding the accused/appellant guilty for commission of the offence under section 302 of the Indian Penal Code for committing murder of Jagoti Bai, sentenced him to undergo imprisonment for life and pay fine of Rs. 500/, in default of payment of fine amount to further undergo three months rigorous imprisonment.

2. The case of the prosecution, in brief, is that on 3rd February, 1997 the accused/appellant was working in his kitchen-garden and his wife namely Jagoti Bai (since deceased) had sent food for him, which was half-cooked, as a result of which the accused become angry and when in the evening he returned to his house he found his wife Jagoti Bai in drunken condition, which further infuriated the accused/appellant and he assaulted the deceased with the wooden handle of the axe, then the deceased started running, when she fell down, the accused again attacked Jagoti Bai on her neck from the side of sharp edge of the axe. As a result of which, she received fatal injury and died spontaneously. The said incident was witnessed by none else than daughter of the deceased namely Hira Bai (P.W.6). Thereafter the son of the accused Naine Singh lodged the First Information Report (Ex.P/3) at the police station- Chura. He also gave merge intimation (Ex.P/12). After registering the case the Station House Officer took up the investigation and left for the scene of occurrence. After giving notice (Ex.P/1) to the panchas he prepared the panchnama (Ex.P/2) of the body of Jagoti Bai. The accused, while in the police custody gave memorandum (Ex.P/5) regarding the weapon of offence axe and in pursuance of that the axe was recovered at the instance of the accused vide (Ex.P/6). The investigating officer also took into possession the plain and blood stained soil as also the broken glass bangles of the deceased from the place of occurrence vide Ex.P/7. The

loongi of the accused was taken into possession vide Ex.P/9. The body was sent for postmortem to the Primary Health Center-Chura, where Dr. Sanjay Vankhede (P.W.19) conducted the post mortem and prepared the postmortem report (Ex.P/12). The site plan (Ex.P/13) was prepared by the investigating officer, the recovered articles were sent to the forensic science laboratory, Raipur from where the report (Ex.P/16) was received. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Gariaband, who in turn committed the case to the Sessions Judge, Raipur from where the Vth Additional Sessions Judge received the case on transfer.

3. The prosecution in order to establish the charge against the accused/appellant examined 20 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and stated that he is innocent and he has been falsely implicated.

4. Learned trial Court after hearing, learned Additional Public Prosecutor and learned counsel for the accused, convicted and sentenced the accused/appellant, as mentioned in para – 1 of this judgment.

5. We have heard Dr. Shailesh Ahuja, learned counsel, appointed by the High Court Legal Aid Committee for appearing on behalf of the appellant and Shri U. N. S. Deo, learned Government Advocate for the respondent/State.

6. As far as the question of homicidal death of Jagoti Bai is concerned, the same has not been disputed by the counsel for the accused/appellant. Even otherwise, Dr. Sanjay Vankhede (P.W.19) in his evidence has stated that on 6.2.1997 when he was working in the primary health center Chura, he conducted the postmortem on the body of Jagoti Bai. There was a incised wound on the left side of neck on back 5x3x5 c.m., radish brown in colour, directed upwards, clotted blood present, fracture of vertebra present 3 c.m., C-3, there was tear of neck blood vessels. In his opinion, the cause of death was shock, due to hemorrhage, as a result of the injury on the neck and the death was homicidal in nature. Therefore, in view of the evidence of Hira Bai (P.W.6) and Dr. Sanjay Vankhede (P.W.19) it is established that the death of Jagoti Bai was homicidal in nature.

7. Now coming to the involvement of the accused/appellant in committing the murder of his wife is concerned, Hira Bai (P.W.6), age about 10 years, the eyewitness of the incident, who is daughter of the accused, has categorically stated that at the time of the incident i.e. in the evening she was working in the kitchen and at that time her father assaulted her mother with the axe Article "B", and as she was frightened, therefore she ran away from the house in the kitchen garden and she heard cries of her mother and she informed about that to her brother Naine Singh. In the cross-examination the defence has not been able to elicit any circumstance, which makes the

evidence of this witness untrustworthy or unreliable. Being the daughter of the accused/appellant her presence in the house was but natural and there was no reason for this witness to implicate her father in a false case, particularly in the murder of her mother. Therefore, we are of the considered opinion that the trial Court has rightly placed reliance on the evidence of this witness. The evidence of this witness lands support from the evidence of the other witnesses namely Guruwaru Ram (P.W.11), Doulat Ram (P.W.12), Bhejgiri (P.W.13), Ram Singh (P.W.14) and Ram Singh S/o Kham Singh (P.W.15).They have stated that on the fateful day, in the evening, they were playing volleyball with Naine Singh (the son of the accused), at that time the accused came on bicycle and asked Naine Singh to go to the house and he will never come back and he left the place. On the next day in the morning when the police came in the village then they came to know about the murder of the wife of the accused/appellant. Therefore, the above conduct of the accused also corroborated the evidence of Hira Bai (P.W.6). Moreover, the axe, weapon of offence was recovered at the instance of the accused. Therefore, in view of the above we are of the opinion that there is no infirmity and illegality in the judgment passed by the trial Court, as far as the involvement of the accused in crime is concerned.

8. Dr. Shailesh Ahuja, learned counsel appearing for the appellant argued that the prosecution has not been able to establish that the accused assaulted Jagoti Bai with intention

to cause her death. From the F.I.R. it has come on record that when the accused returned to the house, he found his wife in drunken condition, which infuriated the accused/appellant and all of a sudden he attacked the deceased with the axe. Therefore, the offence does not travel beyond Section 304 Part-II of the Indian Penal Code.

9. On the other hand, Shri U.N.S. Deo, learned Government Advocate supports the judgement.

10. From the evidence of Hira Bai (P.W.6) it has come on record that the accused in the first instance attacked the deceased with a wooden handle of the axe and when Jagoti Bai started running, he chased Jatoti Bai and again attacked the deceased on the neck with the sharp edge of the axe, which proved fatal because of incised wound on the neck, as a result of which the vertebra was cut. The accused in his statement under Section 313 of the Cr. P.C. simply denied his involvement in the crime. He has not stated that on account of any act of the deceased he was provoked. Self provocation cannot bring the case under exception IV of Section 300 of the I.P.C., it should be from the act of the deceased. The intention of the accused/appellant can be gathered from the nature of the weapon used, the manner in which the deceased was attacked and the part of the body where injury was inflicted.

11. The Supreme Court in the matter of **Thangaiya Vs. State of Tamil Nadu** (2005 Cri. L. J. 684) has held that for gathering the intention of the accused the weapon used, facts leading to

the assault and part of the body where injury is inflicted are the factors to be considered.

12. As mentioned earlier, in the first instance the accused assaulted the deceased with the wooden handle, even at that he did not stop and chased the deceased and again assaulted from the side of sharp edge of the axe, that too on the vital part of the body, as a result of which the vertebra was fractured and Jagoti Bai received the incised injury on the neck and she died spontaneously as a result of the injury. Therefore, from the above facts and circumstances, appearing on record, it can safely be held that the intention of the accused/appellant was to cause murder of Jagoti Bai.

13. In the result, we do not find any infirmity or illegality in the impugned judgement. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

14. The appellant be informed accordingly, by sending a copy of the judgement.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Satish K. Agnihotri
Judge

Thakur